

MARVIN G. STUCK

IBLA 81-368

Decided November 27, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 57643 through CA MC 57646.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

APPEARANCES: Marvin G. Stuck, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Marvin G. Stuck has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated February 5, 1981,

declaring the Y #3, Y & Y, B & B, and Lost Nugget mining claims, CA MC 57643 through CA MC 57646, abandoned and void for failure to file on or before December 30, 1980, evidence of annual assessment work or notices of intention to hold the claims, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were originally located prior to October 21, 1976. 1/ On October 22, 1979, a "Proof of Annual Labor" with respect to the subject mining claims was filed with BLM for labor performed "in the mining assessment work year ending on September 1, 1979." On February 23, 1981, a "Proof of Annual Labor" was filed with BLM for labor performed "in the mining assessment work year ending on September 1, 1980." 2/

In his statement of reasons for appeal, appellant contends that he mailed a copy of his proof of labor "around the middle of November" but that it must have been lost or misplaced. The proof of labor was filed with the county recording office on September 29, 1980.

[1] The owner of an unpatented mining claim, located prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a); Harvey A. Clifton, 60 IBLA 29 (1981). Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of

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1/ Although the certificates of location for the claims are not contained in the files (see n.2, infra), appellant has submitted on appeal copies of relocation notices of the claims indicating the claims were relocated on Feb. 5, 1981, and reciting original location dates which were all prior to enactment of FLPMA (Oct. 21, 1976). The rights of appellant pursuant to the post-FLPMA relocations of the claims are not at issue in this appeal. Recordation of such post-FLPMA claims would require that a copy of the notice of location be filed with BLM within 90 days of such relocation under section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976).

2/ There is no evidence in the record that appellant has ever filed the original notices of location with respect to the mining claims. Failure to file timely a notice of location must result in a mining claim being declared abandoned and void. 43 U.S.C. § 1744(b) and (c) (1976); 43 CFR 3833.1-2; and 3833.4(a); e.g., Walter Schivo, 53 IBLA 40 (1981). The deadline for filing appellant's notice of location was Oct. 22, 1979. 43 CFR 3833.1-2(a).

loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In absence of evidence that BLM did receive timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly declared the claims abandoned and void. M.D.C., Inc., 57 IBLA 35 (1981); Dave R. Newman, 57 IBLA 23 (1981). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

